Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

Reply Comments of
Texas Statewide Telephone Cooperative, Inc.

I. Introduction

Texas Statewide Telephone Cooperative, Inc. (TSTCI) hereby submits reply comments in the above captioned proceeding. TSTCI is an association representing 19 telephone cooperatives and 16 small, rural commercial telephone cooperatives that provide local exchange services in rural Texas (please see Attachment I).

A review of the numerous comments in this proceeding reinforces the need for a long-term policy framework that accommodates evolving technologies and addresses a number of important policy issues. Because there are other Commission proceedings dealing with intercarrier compensation[1] and universal service[2] issues, TSTCI agrees with other commenters that policy decisions related to the regulatory structure for IP-enabled services should be made in unison. The overriding universal service policy goals of this Commission and Congress are structurally tied to the regulatory decisions made in these proceedings.

II. The "Layered" Approach to Regulation Is An Appropriate Solution

Evolving technology has blurred the characteristics that, in the past, distinguished an "information service provider" from a "telecommunications service provider," making it

[1] Developing a Unified Intercarrier Compensation Regime, *Notice of Proposed Rulemaking*, CC Docket No. 01-92, Released April 27, 2001.
[2] Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking*, CC Docket No. 96-45, Released June 8, 2004.

imperative that the Commission develop a new regulatory model for IP-enabled services, as well as for the other services regulated by the Commission. This regulatory model must establish regulatory parity among carriers providing similar services, regardless of the underlying facilities or protocol used. The basic principle of carrier and technology neutrality was discussed in many filed comments. Regulatory policy should be based on sound principles and not the continuation of the current maze of regulating service providers based on the technology deployed. The ultimate convergence of technologies makes this approach much less tenable.

As indicated by several commenters, the current "silo" method of regulation, where each service provider is classified based on its associated network and technology, is no longer an appropriate regulatory model that accommodates evolving technologies.[3] IP breaks the link between services and the medium, and to recognize this evolution, services should not be connected to the technology used, as the "silo" method does today, but regulation should be based on network functionality. To continue a regulatory model based on the type of technology used by a service provider only increases the complexity of the regulatory maze and opportunities for gaming the system. It is important that regulatory policy be easily understood and enforced, which in turn eliminates the opportunity for gaming and arbitrage.

The Commission listed Facility Layer vs. Protocol Layer vs. Application Layer as an option for a new regulatory model. TSTCI believes that further examination of the Open System Interconnection (OSI) Layering model as a possible model for determining appropriate regulation is warranted. TSTCI agrees with the Nebraska Rural Independent Companies (Nebraska Companies) that regulation should be based upon the functionality provided (IP-enabled and other services), not on the particular network used to provide a service.[4] TSTCI

[3] MCI Comments, p. 9-10; Comments of the Nebraska Rural Independent Companies, p. 4.
[4] Comments of the Nebraska Rural Independent Companies, p. 4.

believes that further study is needed to determine which network layers should be fully regulated vs. which should be less regulated or not regulated at all by the Commission; however, the layering approach seems to be a logical approach that enhances regulatory neutrality. The Nebraska Companies advocate that Layers 1 through 5 should be fully regulated and Layers 6 and 7 should be regulated as necessary to ensure public safety and national security. While TSTCI refrains from stating which layers should be fully regulated, TSTCI believes that, with further study, a logical demarcation point will become apparent. It seems clear that the applications and content layers should not be regulated based on economic regulation principles. It appears the layering approach furthers the principles of carrier and technology neutrality. TSTCI submits the Commission currently has the necessary authority to develop a regulatory model based on the OSI layering concept and further has the authority to forbear certain regulatory burdens on specific layers.

III. PSTN Service Providers Should Receive Compensation for Use of Their Networks

TSTCI agrees with those parties who have stated that any retail service provider that uses the facilities of another provider to provide a retail service should compensate that provider for use of such facilities and services.[5] TSTCI further believes a unified compensation mechanism, applicable to all carriers that utilize the PSTN, should be developed in tandem with the decisions made in this proceeding.

Specifically, TSTCI supports the Nebraska Companies' recommendation that the principle of "Retail Service Provider Pays" (RSPP) be adopted as a basic concept for intercarrier

---

[5] See Comments of The Nebraska Rural Independent Companies, The Rural Carriers, National Exchange Carriers Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, among others.

compensation.[6] Under this concept, the end-user's retail service provider is responsible for compensating the local exchange carrier (LEC) for use of its facilities. Today IXCs compensate LECs for terminating and originating toll calls over the LECs' networks under the RSPP concept. RSPP should also apply to IP service providers who use the LECs' networks for originating and terminating toll calls. Where ISPs provide service to end-users through broadband networks, the ISP (as the retail service provider) should compensate the Internet backbone facilities providers as well as the LEC or cable company providing the broadband facility to the end-user's premises. This principle is supportive of the Commission's statement that "…the cost of the PSTN should be borne equitably among those that use it in similar ways."[7]

Although MCI's comments support the use of an OSI layering approach as an appropriate model for regulation, TSTCI does not agree with MCI's conclusion that Bill and Keep is the appropriate compensation mechanism for the use of a LEC's network. While MCI brings forth a pragmatic approach for a new regulatory model, their "zero" value assessment of the underlying LEC's network is not logical.

IV. Public Policy for Public Safety and Disability Access Obligations Should Be Determined and Not Left Pending

Many parties filing comments in this proceeding discussed how public safety and disability access obligations should be handled by the Commission. It is not surprising that those companies offering or planning to offer IP-voice applications advocate a "hands off" approach, arguing the market will lead the way without any need for regulation.[8] However, TSTCI submits that the Commission should directly address these issues and not allow the service providers to

[6] See Comments of the Nebraska Rural Independent Companies, p. 11-13.
[7] See *IP-Enabled Services*, WC Docket No. 04-36, FCC 04-28 ("*IP NPRM*") (rel. Mar. 10, 2004), at para. 61.
[8] MCI Comments p. 38, 44.

delay providing public safety protections and disability access. The public expects E911 functionality from all service providers that offer voice telephony, regardless of the network used to provide service. Likewise, consumers with disabilities should be allowed to choose among service providers like other consumers. TSTCI agrees with OPASTCO's position that requiring public safety and disability access obligations on one set of carriers, but not on another that offers functionally equivalent services over a different platform, presents arbitrage opportunities. The differing treatment also offers a competitive advantage to IP-service providers based on the use of a particular technology.[9] TSTCI supports Avaya's position that "…the Commission should generally insist that competing voice services be subject to the same regulations, including public policy obligations such as access for persons with disabilities and E911 in order to create a regulatory environment that encourages innovative IP-enables services that will compete on the merits."[10]

V. Universal Service Support Mechanism Should Be Infrastructure Based

TSTCI agrees with the proposal made by the Nebraska Companies that a restructure of the universal service support mechanism needs to be addressed so that universal service support funds are targeted to support the service providers' facilities and not services.[11] Where the carriers eligible to receive universal service support are now determined based upon their ability to provide a list of services (universal service), the evolution of IP-enabled services now erodes the link between the service and the network. Universal service support could easily be structured in a manner that would align with the layered approach to regulation that has been

[9] Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, p. 7.
[10] Comments of Avaya, Inc., p. 4.
[11] Comments of the Nebraska Rural Independent Companies, p. 8-10.

presented by several parties. For example, broadband networks are clearly contained in Layer 1, the Physical Layer.

Under this regulatory approach, universal service support for broadband facilities would be appropriate. Universal service support for broadband facilities will insure that rural LECs are adequately compensated for maintaining and upgrading their network facilities. The LECs' ability to recover network investment benefits all consumers and future innovative service providers that desire to use the physical layer of the network.

TSTCI believes that allowing universal service support for broadband networks should be addressed in the ongoing proceedings of the Federal-State Joint Board on Universal Service.

VI. Expand USF Contribution Base to Include All Carriers

NTCA advocates in its initial comments that the base of contributors to the universal service fund should be expanded to include all facilities-based and non-facilities-based VoIP and IP-enabled service providers, regardless of the regulatory classification (information service, telecommunications service, wireless service, or cable service), as well as all providers of broadband transmission. TSTCI agrees with NTCA's comments and urges the Commission to expand the base of contributors to include all broadband internet access service providers and all IP-enabled service providers. As NTCA states, these providers connect with or use the PSTN, benefiting from the network made possible by universal service.[12] As referenced above, the lines are blurring between information service providers and telecommunications providers. It is no longer appropriate for carriers classified as telecommunications providers to support universal service, while other service providers use the networks built by universal service goals.

[12] Initial Comments of the National Telecommunications Cooperative Association, p. 7-12

VII. Summary

TSTCI appreciates the Commission's desire to take no action that will impede the development of the burgeoning IP-enabled services market. However, TSTCI would caution the Commission that without the proper oversight, there can be unintended consequences to the public, to the existing network facilities, and to those carriers who have the obligation to provide universal service and maintain the underlying network facilities.

TSTCI believes that carriers providing similar functions should be treated in a similar manner. TSTCI urges the Commission to further study the OSI Layering concept of regulation for IP-enabled services and other services under the Commission's jurisdiction, as this approach regulates on the basis of functionality, rather than on the basis of service provider and technology used.

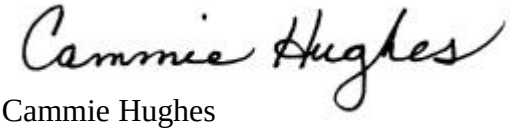
TSTCI submits that service providers using the PSTN should compensate the local exchange carrier for the use of their network facilities. Intercarrier compensation obligations should be based upon the principle of RSPP, and the Commission should not accept a Bill and Keep compensation mechanism that assesses no value to rural networks.

Public safety and disability access obligations should be determined by the Commission at this time and not left to chance. TSTCI believes that, when provided a functionally equivalent voice service, the public expects E911 safety protections and disability access. VoIP service providers, such as Vonage, are marketing a voice-equivalent product that should be required to comply with public safety standards developed by regulatory and legislative bodies for the public good.

TSTCI recommends that the base of USF contributors be expanded to all carriers, including broadband providers, ISPs and IP-enabled service providers, that offer retail products

to consumers using the LEC's networks. The universal service fund support mechanism should be restructured such that support is targeted to network facilities and not service providers. Otherwise, the ability of a rural LEC to provide affordable service to rural customers comparable to urban consumers in high cost rural areas will become significantly more difficult by continuing to invest in and maintain its network.

Respectfully submitted,



Cammie Hughes
Authorized Representative
Texas Statewide Telephone Cooperative, Inc.

ATTACHMENT I

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Brazos Telecommunications, Inc.
Brazos Telephone Coop., Inc.
Cameron Telephone Company
Cap Rock Telephone Coop., Inc.
Central Texas Telephone Coop., Inc.
Coleman County Telephone Coop., Inc.
Colorado Valley Telephone Coop., Inc.
Comanche County Telephone Company, Inc.
Community Telephone Company, Inc.
Cumby Telephone Coop., Inc.
Dell Telephone Coop., Inc.
E.N.M.R. Plateau Communications, Inc.
Eastex Telephone Coop., Inc.
Electra Telephone Company
Etex Telephone Coop., Inc.
Five Area Telephone Coop., Inc.
Ganado Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company
Livingston Telephone Company
Mid-Plains Rural Telephone Coop., Inc.
Nortex Communications, Inc.
North Texas Telephone Company
Panhandle Telephone Coop., Inc.
Peoples Telephone Coop., Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Coop., Inc.
South Plains Telephone Coop., Inc.
Tatum Telephone Company
Taylor Telephone Coop., Inc.
Wes-Tex Telephone Coop., Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Coop., Inc.
XIT Rural Telephone Coop., Inc.